

REMARKS

Claims 18-60 are pending in this application. The Examiner has rejected claims 18-60 under 35 U.S.C. § 102(b) as being anticipated by United States Pat. No. 5,911,704 to Humes (“Humes”).

The Examiner noted that no action could be taken on Applicant’s request for an interference with United States Pat. App. Ser. No. 09/999,210 until the application was deemed in condition for allowance. Applicant notes that Pat. App. Ser. No. 09/999,210 is now abandoned.

The Examiner alleges that claims 18-60 are anticipated under 35 U.S.C. § 102(b) by Humes. Applicant respectfully disagrees. In particular, Humes discloses and claims an implantable device having a “capsule”. Humes states at column 2, line 64 to column 3, line 1: “The term ‘capsule’ as used herein is understood to mean any *hollow structure* dimensioned to fit within the lumen of a blood vessel, which, when introduced into the blood vessel, does not occlude or prevent blood flow through the vessel.” (emphasis added). Humes describes a capsule that relies on the process of *diffusion* through a semi-permeable membrane. See Humes at column 3, lines 14-24. Humes further describes that “[i]t is believed that the transport of oxygen from the lumen of the blood vessel to the cells enclosed within the capsule occurs almost exclusively by diffusion” and then describes “critical” diffusion distances. See Humes at column 8, line 61 to column 9, line 23.

In contrast, the present invention involves the process of *elution* and involves an *eluting material*. Eluting material comprising a spongy material, a floppy elongated member adapted for multiple turns, and a swellable pellet are described. Humes does not teach a device comprising an eluting material. Accordingly, withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

Because each of the independent claims 18, 26, 42, 47, and 52 have been amended to include eluting material, Applicant respectfully submits that those claims are in condition for immediate allowance, as are each of the claims depending therefrom.

CONCLUSION

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

Please apply fees for a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b) (\$770.00), an Extension of Time for three months (\$525.00), and any other charges, or any credits, to Jones Day Deposit Account No. 503013.

If the Examiner believes it would be useful to advance prosecution, the Examiner is invited to telephone the undersigned at (858) 314-1200.

Respectfully submitted,

Date: November 9, 2007

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